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265 NLRB No. 82

D--9525
Colorado Springs, CO

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LENNIS PRICE PLASTERING COMPANY

and

Case 27--CA--7910

CARPENTERS DISTRICT COUNCIL
OF DENVER & VICINITY AND
ITS AFFILIATE LOCAL
UNION NO. 1391

DECISION AND ORDER

Upon a charge filed on June 23, 1982, by Carpenters District Council of Denver & Vicinity and its Affiliate Local Union No. 1391, herein called the Union, and duly served on Lennis Price Plastering Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 27, issued a complaint and notice of hearing on August 9, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On September 1, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with

appendixes attached. Subsequently, on September 10, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and, therefore, the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that unless an answer to the complaint was filed within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to be admitted to be true and

may be so found by the Board.'" Further, according to the uncontroverted allegations of the Motion for Summary Judgment, on August 24, 1982, the counsel for the General Counsel called Respondent's office but received no reply. On August 25, 1982, the counsel for the General Counsel again called Respondent's office leaving a message which informed Respondent that no answer had been filed and that Respondent had a deadline of August 27, 1982, to file an answer. Respondent did not reply to either phone call. No answer has been filed as of the date of the filing of the Motion for Summary Judgment and its amendment, and Respondent has failed to file a response to the Notice To Show Cause in which it could have attempted to explain its failure to answer.

No good cause for failure to file an answer having been shown, in accordance with the rules set forth above, the allegations of the complaint are deemed to be admitted. Accordingly, we find as true all the allegations of the complaint and grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Lennis Price Plastering Company is, and has been at all times material herein, a sole proprietorship organized under and existing by virtue of the laws of the State of Colorado with its principal office and place of business at Colorado Springs, Colorado. Respondent is engaged in the construction industry as a lathing and plastering contractor. In the course and conduct of

its business operations in Colorado, Respondent annually purchases and receives goods and materials valued in excess of \$50,000 directly from points outside the State of Colorado, and annually performs services valued in excess of \$50,000 for other firms which annually, in the course of their operation in Colorado, individually purchase and receive materials and services valued in excess of \$50,000 directly from firms located outside Colorado. Further, Respondent is a member of the Contracting Lathers and Plasterers Association (herein the CLPA), an organization of employers engaged in the construction industry that exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including the Union. The employer-members of the CLPA, in the course and conduct of their business in Colorado, collectively annually purchases and receive goods and materials valued in excess of \$50,000 directly from points and places outside the State of Colorado.

We find, on the basis of the foregoing, that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

On or about April 12, 1982, the Union requested that Respondent bargain collectively with it with respect to wages, hours, and other terms and conditions of employment for the following unit of employees:

All lathers, foremen, journeymen, and apprentices, as further described in Articles 1, 2, 3, and 4 of the 1982--84 Lather Agreement between the CLPA and the Union, to which Respondent is signatory.

The above-described employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since in or about March 1980, and at all times material herein, the Union has been designated the exclusive collective-bargaining representative of Respondent's employees in the unit described above, and has been recognized as such by Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period of January 27, 1982, to April 30, 1984.

In furtherance of its role as exclusive bargaining representative for the unit, the Union requested the following information from Respondent in letters dated April 12, 1982, and May 18, 1982:

- (1) The names and addresses of all projects on which Respondent has performed work since January 27, 1982, the beginning and ending dates of work on such projects, and the general nature of the work performed.
- (2) A copy of the agreement(s), including any modifications thereto, governing or providing for the work performed on those projects identified in paragraph 1. The Respondent may, if it desires, excise any references to contract amounts or prices in those agreement(s).

(3) The names, addresses, social security numbers, employee classifications, wage rates, and fringe benefit contribution rates of all individuals who performed work for Respondent on the projects identified in paragraph 1.

(4) Copies of all contribution reports filed on or after January 27, 1982, with the several trust funds described in Article 16(A) of the 1982--84 Lather Agreement.

This information is necessary for and relevant to the Union's performance of its function as the bargaining representative. Since on or about April 12, 1982 Respondent has failed and refused to provide the requested information.

Accordingly, we find that by the aforesaid conduct Respondent has refused to bargain collectively with the above-named labor organization as the exclusive bargaining representative of the employees in the above-described unit, and has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist therefrom and to take certain affirmative action as set forth below designed to effectuate the purpose and policies of the Act.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Lennis Price Plastering Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Carpenters District Council of Denver & Vicinity and its Affiliate Local Union No. 1391 is a labor organization within the meaning of Section 2(6) and (7) of the Act.

3. By the acts described in section III, above, Respondent has refused to bargain collectively with the above-named labor organization as the exclusive bargaining representative of the employees in the above-described unit, and has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders

that the Respondent, Lennis Price Plastering Company, Colorado Springs, Colorado, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive bargaining representative of its unit employees by refusing to provide information requested by the Union in furtherance of its role as the exclusive bargaining representative for said employees. The appropriate unit is:

All lathers, foremen, journeymen, and apprentices, as further described in Articles 1, 2, 3, and 4 of the 1982--84 Lather Agreement between the CLPA and the Union, to which Respondent is signatory.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which, we find, will effectuate the policies of the Act:

(a) Upon request, bargain with Carpenters District Council of Denver & Vicinity and its Affiliate Local Union No. 1391 by providing the Union with the following necessary and relevant information:

(1) The names and addresses of all projects on which Respondent has performed work since January 27, 1982, the beginning and ending dates of work on such projects, and the general nature of the work performed.

(2) A copy of the agreement(s), including any modifications thereto, governing or providing for the work performed on those projects identified in paragraph 1. Respondent may, if it so desires, excise any references to contract amounts or prices in those agreement(s).

(3) The names, addresses, social security numbers, employee classifications, wage rates, and fringe benefit contribution rates of all individuals who

performed work for Respondent on the projects identified in paragraph 1.

(4) Copies of all contribution reports filed on or after January 27, 1982, with the several trust funds described in Article 16(A) of the 1982--84 Lather Agreement.

(b) Post at its Colorado Springs, Colorado, office copies of the attached notice marked "'Appendix.'"¹ Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

December 3, 1982

John H. Fanning, Member

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

(4) Copies of all contribution reports filed on or after January 27, 1982, with the several trust funds described in Article 16(A) of the 1982--84 Lather Agreement.

LENNIS PRICE PLASTERING COMPANY

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, U.S. Custom House, Room 260, 721 19th Street, Denver, Colorado 80202, Telephone 303--837--3553.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively by refusing to provide information requested by Carpenters District Council of Denver & Vicinity and its Affiliate Local Union No. 1391 in furtherance of its role as exclusive bargaining representative of the employees in the following bargaining unit:

All lathers, foremen, journeymen, and apprentices, as further described in Articles 1, 2, 3, and 4 of the 1982--84 Lather Agreement between the CLPA and the Union, to which the Employer is signatory.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, provide the following information to the Union which is necessary and relevant to the performance of its function as bargaining representative for the above-described unit:

(1) The names and addresses of all projects on which the Employer has performed work since January 27, 1982, the beginning and ending dates of work on such projects, and the general nature of the work performed.

(2) A copy of the agreement(s), including any modifications thereto, governing or providing for the work performed on those projects identified in paragraph 1. The Employer may, if it so desires, excise any references to contract amounts or prices in those agreement(s).

(3) The names, addresses, social security numbers, employee classifications, wage rates, and fringe benefit contribution rates of all individuals who performed work for the Employer on the projects identified in paragraph 1.